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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka
CHRISTENE COHEN), *in personam* and
F/V POINT LOMA, Official Number
515298, a 1968 steel-hulled, 126-gross ton,
70.8- foot long fishing vessel, her engines,
tackle, furniture, apparel, etc., *in rem*, and
Does 1-10,

Defendants.

Case No.:

IN ADMIRALTY

EX PARTE APPLICATION TO
APPOINT SUBSTITUTE
CUSTODIAN

Pursuant to Rule C(3) of the Supplemental Rules for Admiralty of the Federal Rules
of Civil Procedure and Rule 9-1(a) of the Admiralty Rules of this Court, Plaintiff, DEL
MAR SEAFOODS, INC. ("DEL MAR"), hereby requests *ex parte* that the Court appoint a
substitute custodian in lieu of the United States Marshal for the Northern District of
California for the vessel F/V POINT LOMA, Official Number 515298, a 1968 steel-hulled,
126-gross ton, 70.8- foot long fishing vessel, her engines, tackle, furniture, apparel, (the
"Vessel").

1. An introduction and factual summary of this matter is included in Plaintiff's
concurrently filed Ex Parte Application for an Order for Arrest, as well as Plaintiff's

1 Verified Complaint, also filed herewith. Those papers are hereby incorporated into this
2 application by this reference as though fully set forth herein.

3 2. It is contemplated that the U.S. Marshal will seize Defendant Vessel F/V
4 POINT LOMA (Official No. 515298) forthwith pursuant to a warrant of arrest authorized by
5 Order of this Court and issued by the Clerk.

6 3. The Vessel will need to be safely stored and maintained during the period of
7 arrest, with 24-hour security provided.

8 4. The proposed Substitute Custodian, National Maritime Services Inc., has the
9 ability, experience, expertise and the resources within the District to provide all services
10 required for the preservation, storage, and safekeeping of the Vessel during the pendency of
11 this action.

12 5. In consideration for of the U.S. Marshal's consent to the substitution of
13 custody, Plaintiff DEL MAR SEAFOODS, INC. will agree to release the United States and
14 the U.S. Marshal from any and all liability and responsibility arising out of the care and
15 custody of the Vessel after it has been released to the substitute custodian. As shown in the
16 attached affidavit of Mark Brown, Vice President of National Maritime Services, Inc., the
17 proposed Substitute Custodian, National Maritime Services, Inc., agrees to hold harmless
18 and indemnify the United States and the U.S. Marshal's Service from any and all claims
19 whatsoever arising out of the Substitute Custodian's negligence in possession and
20 safekeeping of the Vessel.

21 6. Pursuant to Rule 9-1 (a) of the Admiralty Rules of this Court, after a vessel
22 has been arrested and brought into the custody of the United States Marshal, the Court may
23 appoint a substitute custodian in place of the Marshal by order of the Court.

24 7. The proposed Substitute Custodian is able and willing to perform custodial
25 services at a rate **substantially lower** than the Marshal. The appointment of the proposed
26 Substitute Custodian would therefore avoid economic waste to the detriment of Plaintiff,
27 Defendants, the Vessel, and any other creditors who may have a claim against the Vessel.
28

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DelMarSeafoods2504

8. Plaintiff further requests that the expenses of the substitute custodian in keeping the vessel in *custodia legis* be taxed as costs in this action. See *New York Dock Co. v. S.S. Poznan*, 274 U.S. 117 (1927); *Boeing Co. v. M/V Spirit of Discovery*, 654 F. Supp. 740, 742 (W.D. Wash. 1986); and S.D. Cal Rule. E.1(e)(2) (Marshal's fees taxable as costs).

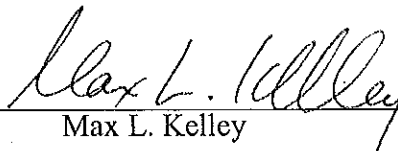
CONCLUSION

Plaintiff DEL MAR SEAFOODS, INC. respectfully requests that the Court issue an Order appointing National Maritime Services, Inc. as substitute custodian of the Vessel until further order of this Court. Plaintiff further requests that the Court order that all expenses incurred in safekeeping and maintaining the Vessel while under arrest be taxed as costs in this action.

Respectfully submitted,

Dated: June 7, 2007

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Case Name: Del Mar Seafoods, Inc v. Cohen et al

Case Number: 3:07-cv-2952

Filer: Del Mar Seafoods, Inc

Document Number: 4(No document attached)

Docket Text:

Exparte Application to Appoint Substitute Custodian filed by Del Mar Seafoods, Inc. (slh, COURT STAFF) (Filed on 6/7/2007)

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